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Case Number (if already assigned) PUR-2019-00218

Case Name (if known) Application of Toll Road Investors Partnership II, L.P.
For an Increase in the Maximum Level of Tolls

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Document Description Summary Reply of the Board of Supervisors of Loudoun County
in Support of its Motion for an Extension of Time to File
Direct Testimony and Amend the Procedural Schedule

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2020 APR 10 13 33

Andrew J. Flavin
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April 6, 2020

BY ELECTRONIC FILING

Hon. Joel H. Peck, Clerk
State Corporation Commission
Document Control Center
Tyler Building, 1st Floor
1300 East Main Street
Richmond, VA 23219

**Re: Application of Toll Road Investors Partnership II, L.P., For an Increase in the
Maximum Level of Tolls - Case No. PUR-2019-00218.**

Dear Mr. Peck:

Enclosed for electronic filing in the above-captioned proceeding please find the Reply of the Board of Supervisors of Loudoun County in Support of its Motion for an Extension of Time to File Direct Testimony and to Amend the Procedural Schedule. If you have any questions or need further information, please feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Andrew J. Flavin".

Andrew J. Flavin

Enclosure

cc: Service List

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

APPLICATION OF)	
)	
TOLL ROAD INVESTORS)	CASE NO. PUR-2019-00218
PARTNERSHIP II, L.P.)	
)	
For an increase in the maximum)	
level of tolls)	

**REPLY OF THE BOARD OF SUPERVISORS OF LOUDOUN COUNTY
IN SUPPORT OF ITS MOTION FOR AN EXTENSION OF TIME
TO FILE DIRECT TESTIMONY AND AMEND THE PROCEDURAL SCHEDULE**

The Board of Supervisors of Loudoun County (“Loudoun Board”) is surprised that Toll Road Investors Partnership, II (“TRIP II”) insists on rushing through this proceeding to raise toll prices by at least 30 percent over the next five years on the Dulles Greenway when, even under the most optimistic of circumstances, the requested increases will become effective just as the Commonwealth of Virginia (“Commonwealth”) and its citizens begin to emerge from a crippling health and economic crisis. The Loudoun Board maintains that the unprecedented ongoing and evolving impacts of the COVID-19 global pandemic has negated its ability to file direct testimony and participate in this case in the near future. Thus, the Loudoun Board respectfully moves the Honorable Hearing Examiner to grant an extension of time until October 2, 2020, to file direct testimony and amend the procedural schedule as requested in its Motion for an Extension of Time to File Direct Testimony and to Amend the Procedural Schedule (“Motion”).

Key Developments Since the Loudoun Board Filed the Motion.

1. On March 24, 2020, the Loudoun Board filed the Motion seeking an extension of time to file its direct testimony and amendment of the procedural schedule necessitated by the unprecedented global COVID-19 pandemic. The Motion also requested similar extensions to other aspects of the procedural schedule. The Hearing Examiner issued a ruling on March 27, 2020,

providing parties the opportunity to file responses on or before March 31, 2020, and allowing the Loudoun Board to file a reply on or before April 6, 2020.

2. Since filing the Motion, there have been several important developments relating to the COVID-19 crisis, including the following:

a. Governor Northam issued Executive Order No. 55, *Temporary Stay at Home Order Due to Novel Coronavirus (COVID-19)*, Gov. Ralph S. Northam (March 30, 2020) (“Stay at Home Order”), which requires all Virginia residents to stay at their place of residence unless they are seeking essential services, including grocery shopping or medical care, visiting family or caring for other individuals or animals, engaging in outdoor exercise, or traveling for work. The Stay at Home Order is effective until at least June 10, 2020.

b. The Supreme Court of Virginia also extended its Order Declaring a Judicial Emergency in Response to COVID-19 Emergency (“Judicial Emergency Declaration”) through at least April 26, 2020 which, among other things, suspended all proceedings in Virginia circuit and district courts and tolled and extended all deadlines for 21 days pursuant to Va. Code § 17.1-330 D. As noted in the Motion, the Commission took judicial notice of the original Judicial Emergency Declaration in Case No. CLK-2020-00005. The Commission also took judicial notice of the order extending the Judicial Emergency Declaration in its Order Requiring Electronic Service issued April 1, 2020 in Case No. CLK-2020-00007.

c. President Trump extended the federal government’s social distancing guidelines through at least April 30, 2020.¹

¹ See *Remarks by President Trump, Vice President Pence, and Members of the Coronavirus Task Force in Press Briefing*, issued March 30, 2020 (<https://www.whitehouse.gov/briefings-statements/remarks-president-trump-vice->

TRIP II Mischaracterizes Staff's Position.

3. On March 31, 2020, Commission Staff ("Staff") filed a letter response to the Motion, stating in relevant part that, due to "the evolving health crisis and recent developments, Staff believes some adjustment to the current procedural schedule may be warranted[.]"² Staff, however, did not take a position with respect to the appropriate length of any extension.³ Also on March 31, 2020, TRIP II filed a response opposing the Motion ("Response"), to which the Loudoun Board is filing this Reply.

4. The Loudoun Board notes that the statement in TRIP II's response that it "understands that the Commission Staff do not agree with a six-month extension,"⁴ is simply not accurate. As noted in the Staff's Letter Response, "Staff believes some adjustment to the procedural schedule may be warranted," but does not take a position regarding the length of any extension. At no point has Staff opposed the Loudoun Board's Motion. TRIP II's characterization of the Staff's position is wrong.

Loudoun County Has Devoted Nearly All Its Resources to the COVID-19 Response.

5. The main thrust of TRIP II's argument is that, because the Loudoun Board had a general idea that a rate increase might be coming before the Commission issued its January 27, 2020, Order for Notice and Hearing ("Scheduling Order"), the Loudoun Board should have completed its direct testimony five weeks before the current April 24 deadline, in anticipation of the COVID-19 crisis. Alternatively, even if the Loudoun Board could not predict the current state of affairs, it nonetheless now should prioritize its participation in this proceeding above its COVID-19 response so TRIP II can implement any approved rate increase by January 1, 2021.

president-pence-members-coronavirus-task-force-press-briefing-14/).

² Staff Letter Response at 1 (March 31, 2020).

³ *Id.*

⁴ TRIP II Response at 5 (March 31, 2020).

This reasoning is faulty on many levels.

6. As the applicant, TRIP II had ample time to prepare its application and direct testimony, as well as submit supplemental testimony during a period when its attention was not consumed by COVID-19. Although the Loudoun Board and certain County employees may generally have been aware that TRIP II might be requesting a rate increase before TRIP II claims to have mailed the Scheduling Order,⁵ it was not at all clear that TRIP II immediately would pursue the rate increase even after it filed its application.⁶

7. Pursuant to Ordering Paragraphs 5 and 6 of the Scheduling Order entered on January 27, 2020, the Commission required TRIP II to publish notice in local newspapers and serve a copy of the Scheduling Order on certain local and state government organizations on or before February 18.⁷ Rather than complete those tasks promptly, TRIP II waited until February 13 to publish notice in local newspapers and February 18 to (allegedly) mail a copy to the Loudoun Board.⁸

8. In any event, the fact that Loudoun County officials became aware in late February 2020 that TRIP II would be pursuing a rate increase has no bearing on the relief sought in the Motion because, since March 16, 2020, the attention of the Loudoun Board, County Attorney, County Administrator and other key employees necessarily has focused almost exclusively on the protection of the safety, health and welfare of County residents during the COVID-19 pandemic.

9. Indeed, since March 16, the County Administrator and all Assistant County Administrators have completely dedicated themselves to responding to the COVID-19 crisis from

⁵ The Loudoun Board notes that although TRIP II filed an affidavit with the Commission stating it mailed a copy of the Scheduling Order to the Loudoun Board on February 18, 2020, the Loudoun Board never received a copy of the Scheduling Order via first class mail.

⁶ TRIP II continued to indicate through much of February 2020 that it was seeking to work out a legislative compromise and would be deferring rate proceedings.

⁷ Scheduling Order at 4-5.

⁸ Again, the Loudoun Board never received a copy of the Scheduling Order via first class mail.

the County’s Emergency Operations Center. Similarly, the County Attorney has worked around the clock for weeks to address the myriad of COVID-19-related legal issues confronting the County, including, but not limited to: (1) declaring a local emergency; (2) addressing tax deadlines; (3) drafting continuity ordinances pursuant to Va. Code § 15.2-1413; (4) adjusting election operations; (5) revising access policies for government buildings; and (6) preparing quarantine and isolation orders. The County already has lost *at least* five weeks of the period the Commission allocated for respondents to prepare direct testimony – not because of procrastination, but because of its herculean efforts to protect County residents during these challenging times. To further detail these efforts, the Loudoun Board attaches two exhibits: **Exhibit A** provides a high-level timeline of the COVID-19 pandemic’s development and the County’s response to date; **Exhibit B** summarizes the County’s Pandemic Response Plan,⁹ Emergency Operations Plan,¹⁰ and Emergency Operations Center.

10. TRIP II would have the Commission believe that its operations have been just as affected by COVID-19 as the County’s operations, and that, because its management (which is based in Australia) is willing to proceed without delay, the County should be willing to do so, too. TRIP II states that it “has no intention to stop serving the drivers that choose to drive on the Greenway and is committed to operate the road to serve those drivers[]” and it “expects that the County shares this same sentiment as it continues to serve the needs of the citizens and businesses in Loudoun County both in response to COVID-19 and in response to the general needs of the County.”¹¹

11. Certainly, governments, businesses and residents of the Commonwealth are

⁹ See *Pandemic Response Plan*, (March 2020) (<https://www.loudoun.gov/DocumentCenter/View/179>).

¹⁰ See *Emergency Operations Plan*, (July 2019) (<https://www.loudoun.gov/729/Emergency-Operations>).

¹¹ Response at 3.

sacrificing daily. But TRIP II's position here ignores the many national, state and local government orders (including those cited in the Motion and Response) that clearly require the Loudoun Board, a government body, to prioritize public health, safety and welfare over all else. While the Loudoun Board appreciates any adjustments TRIP II has made to keep the Dulles Greenway operating (although it is unclear what those adjustments may be, particularly when most people have been ordered to avoid travel), such efforts simply do not compare to the County's obligations as a government body during the COVID-19 response. The Loudoun Board and County should not be required to divert already stretched resources away from their COVID-19 response efforts to meet TRIP II's preferred timeline.

12. As noted in the Motion and acknowledged in the Response, the Loudoun Board hired the law firm of Troutman Sanders LLP ("the Firm") to represent it in this matter. TRIP II suggests that the Firm "can take an active role in preparing direct testimony for the County and responding to procedural matters so the County and its employees can devote time to the COVID-19 outbreak."¹² Indeed, the Firm is doing exactly this. But the Loudoun Board and other County employees need to actively participate in the development of testimony and expert witness analyses, as well as public hearings and the evidentiary hearing. The Firm cannot act unilaterally on behalf of the Loudoun Board. Moreover, the Loudoun Board and County employees should not be denied the opportunity to participate in this proceeding due to their COVID-19 response obligations.¹³

¹² Response at 5.

¹³ Local governments must hold public meetings to conduct public business. In light of the recent executive orders issued by Governor Northam, Attorney General Mark Herring issued an opinion addressing circumstances under which public bodies unable to meet in person may meet electronically. The Attorney General opined that public bodies may meet electronically only under limited circumstances: (1) where needed to make immediate decisions to address an emergency and failure to do so could result in irrevocable public harm; and (2) where necessary to assure continuity in government during an emergency, provided normal government activity resumes within six months. Stated another way, Attorney General Herring stressed that "public bodies should carefully consider whether taking a given action during a meeting held by electronic communication means is truly essential and should defer any and

**The Current Procedural Schedule Does Not and Could Not Account for the
Unprecedented Impacts of the COVID-19 Pandemic.**

10. As TRIP II suggests,¹⁴ the Firm also investigated commissioning its own traffic study on behalf of the Loudoun Board. But in light of Governor Northam's Stay at Home Order, completing an accurate traffic study is virtually impossible when most people are required to remain at home to halt the spread of this pandemic. The Loudoun Board's ability to commission such a study and present such evidence should not be prejudiced by this unprecedented situation.

11. The Stay at Home Order, which is effective until at least June 10, 2020, will also disrupt the local public hearings currently scheduled for May 11 – 12, 2020.¹⁵ These types of hearings are not appropriate for video or other forms of remote conferencing because some members of the public may not have the technology or capabilities to participate. Indeed, under Attorney General Herring's latest opinion, unless they are directly connected to the COVID-19 emergency, such hearings may not be allowed to take place by video or other remote means at all. And even if hearings were permitted, their purpose will be severely undermined by the fact that the foremost concern of citizens will be the devastating health and economic impacts of COVID-19, and taking actions to prevent its spread. Importantly, the County – and its citizens – will be preoccupied by these issues for months after the Stay at Home Order is lifted.

12. The requested toll increases are not mandated by any statute, regulation or prior Commission order, nor is there any requirement that the Commission rule on the application by a certain date. Importantly, TRIP II has not stated that it would be prejudiced or harmed by any

all decisions that can be deferred until it is once again possible to meet in person.” See Opinion # 20-011, Attorney General Mark Herring (March 20, 2020). Thus, local governments’ ability to conduct non-COVID-19 related business is severely limited.

¹⁴ *Id.*

¹⁵ Neighboring jurisdictions like West Virginia, Maryland and Washington D.C. recently issued similar stay at home orders.

extension or other delay in implementing its requested toll increases. Nonetheless, TRIP II has taken an all-or-nothing approach in opposing the County Board's Motion, asking the Commission to "deny the County's Motion in its entirety," and stating that "TRIP II is prepared to proceed on the current schedule" which "the Commission determined to be appropriate[.]"¹⁶ TRIP II's insistence on adherence to the original schedule is particularly perplexing, because the Commission issued the Scheduling Order on January 27, 2020 (less than a week after the *first* confirmed case of COVID-19 in the United States), a date on which the Commission could not have known how severely COVID-19 would threaten public health and disrupt daily life.

13. While nobody can predict with any certainty how long the health and economic impacts of COVID-19 will last, it is clear they will not be resolved any time soon.¹⁷ The Stay at Home Order remains in effect until at least June 10, 2020, and schools are closed for the rest of the academic year. The testimony and expert analysis offered in support of TRIP II's application is predicated on a dramatically different pre-pandemic environment. Even after life returns to "normal," that "normal" likely will involve more widespread remote work, reducing traffic on all roads.

14. The Loudoun Board is concerned that rushing through this proceeding on the current schedule will not reflect these new realities, particularly where TRIP II seeks rate increases year-over-year for each of the next five years. This would place a substantial multi-year burden on Northern Virginia workers, many of whom will have not received paychecks for months,¹⁸

¹⁶ Response at 5.

¹⁷ On April 2, 2020, President Trump approved a major disaster declaration for the Commonwealth of Virginia related to the effects of COVID-19, "beginning January 20, 2020 and continuing." See <https://www.whitehouse.gov/briefings-statements/president-donald-j-trump-approves-virginia-disaster-declaration-2/>.

¹⁸ While we are only beginning to feel the economic effects of COVID-19, the Virginia Employment Commissioner reported 46,885 unemployment claims between March 15 and March 21 and 46,277 claims between March 22 and March 28, a massive increase from the 2,705 claims from the week before and each *almost doubling* the previous record of 25,133 in December 1989. See Department of Labor, *COVID-19 Impact* (Mar. 26, 2020),

thereby hindering the region's ability to emerge from a COVID-19 driven recession or depression.

WHEREFORE, the Loudoun Board respectfully requests that the Honorable Hearing Examiner grant its Motion on an expedited basis.

Respectfully submitted,

By: 
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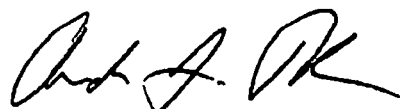
CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of April 2020, a true copy of the Loudoun Board's foregoing Motion of the Board of Supervisors of Loudoun County for an Extension of Time to File Direct Testimony and to Amend the Procedural Schedule was sent via electronic mail¹⁹ to following:

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¹⁹ On April 1, 2020, the Commission issued its Order Requiring Electronic Service in Case No. CLK-2020-00007. Pursuant to this order, "all pleadings, briefs, or other documents required to be served on parties to a proceeding or on the Commission's Staff shall be served by electronic mail service unless electronic mail service is incapable of being performed."

EXHIBIT A

LOUDOUN COUNTY'S RESPONSE TO THE COVID-19 PANDEMIC

Timeline of Events:

December 31, 2019: Wuhan, China reported to the WHO they had cases of pneumonia between December 12, 2019 and December 29, 2019. There was no knowledge of the coronavirus at that time. *Coronavirus Outbreak Timeline Fast Facts*, CNN Editorial Research, Updated 11:31 AM ET, Thu March 26, 2020; <https://www.cnn.com/2020/02/06/health/wuhan-coronavirus-timeline-fast-facts/index.html>.

January 7, 2020: Chinese doctors determined that the virus is a novel coronavirus. *Id.*

January 17, 2020: The United States began to screen travelers at airports in San Francisco, Los Angeles, and New York for symptoms of coronavirus. *Id.*

January 21, 2020: The first official case of coronavirus in the United States was confirmed in Washington State. *Id.*

January 23, 2020: WHO convened an emergency committee that stated that the Wuhan coronavirus was not yet a public health emergency of international concern. *Coronavirus Outbreak Timeline Fast Facts*, CNN Editorial Research, Updated 11:31 AM ET, Thu March 26, 2020 (<https://www.cnn.com/2020/02/06/health/wuhan-coronavirus-timeline-fast-facts/index.html>) (“CNN Coronavirus Outbreak Timeline Fast Facts”).

January 29, 2020: The White House formed a task force, the President’s Coronavirus Task Force, to monitor the spread of the virus and to provide current information to Americans. *Id.*

January 30, 2020: The first case of confirmed person-to-person transmission of the virus was reported in the United States. The WHO also determined that the coronavirus is a Public Health Emergency of International Concern. *Id.*

February 5, 2020: The cruise ship, the Diamond Princess, is quarantined after returning to Japan and officials began testing the passengers on the ship. The number of coronavirus cases on the ship becomes the largest number of cases outside of China. *A Timeline of the Coronavirus Pandemic*, New York Times, Derrick Bryson Taylor, March 31, 2020 (<https://www.nytimes.com/article/coronavirus-timeline.html>) (“NYT A Timeline of the Coronavirus Pandemic”).

February 11, 2020: The WHO proposed a new name for the Wuhan coronavirus, COVID-19. *Id.*

February 19, 2020: Passengers on the Diamond Princess cruise ship disembarked in Japan after testing negative for coronavirus. Passengers included Americans. *CNN Coronavirus Outbreak Timeline Fast Facts*.

February 21, 2020: The CDC changed its criteria for counting the number of confirmed coronavirus cases in the United States. *Id.*

February 25, 2020: The National Institute of Health began clinical trials for the safety and effectiveness of an antiviral drug meant to combat the coronavirus. The first participant was one of the passengers from the Diamond Princess cruise ship. *Id.*

February 26, 2020: The CDC indicated that an individual, with no relevant travel history or exposure, being treated for coronavirus in California is the first possible case of community spread. *Id.*

March 1, 2020: The Director of Loudoun Health District approved the Loudoun Health District Pandemic Response Plan, which was revised to incorporate COVID-19. *See* <https://www.loudoun.gov/DocumentCenter/View/179/Loudoun-Pandemic-Response-Plan?bidId=>

March 4, 2020: The CDC formally removed prior restrictions on testing of individuals for coronavirus. The CDC advised that health care professionals should use their judgment and discretion to determine if an individual is showing symptoms of coronavirus and whether that individual should be tested. *CNN Coronavirus Outbreak Timeline Fast Facts.*

Loudoun County released a news alert that the Board of Supervisors (“Board”) would receive a briefing on the coronavirus at a special meeting of the Board on March 11, 2020. The news release provided guidance from the Loudoun County Health Department that included recommendations to stay home when sick, avoid close contact with sick individuals, wash hands, clean and disinfect surfaces frequently, and to follow CDC recommendations when utilizing facemasks. *See* <https://www.loudoun.gov/CivicAlerts.aspx?AID=5528>.

March 6, 2020: The Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020 (“Coronavirus Preparedness”) was signed into law, which appropriated \$6.7 billion for a domestic response to various agencies including the CDC and FDA and \$1.6 billion for an international response.

The Loudoun County Emergency Operations Center (“EOC”) was activated at enhanced monitoring level, with a focus on planning and coordination in preparation for the first COVID-19 case in Loudoun County.

March 10, 2020: The Loudoun County Health Department announced that a County resident had tested “presumptive positive” for coronavirus. *See* <https://www.loudoun.gov/CivicAlerts.aspx?AID=5553>.

Loudoun County officials held a news conference to address the first case of coronavirus in the County. The Board encouraged residents to follow CDC guidelines

March 11, 2020: The WHO declared novel coronavirus to be a pandemic. *CNN Coronavirus Outbreak Timeline Fast Facts.*

The Board held a special business meeting and received a briefing from staff on COVID-19. The staff report noted that due to the Washington Dulles International Airport being located in Loudoun County, the County has “prepared for the possibility of a pandemic.” Information Item

1-1. However, the report also noted that “each event is unique and much is yet unknown about the impact COVID-19 may have in Loudoun County.” *Id.*

Social distancing guidelines, including working from home and avoiding large gatherings including more than 50 people, were provided by the CDC. *What is ‘Social Distancing’? Here’s How to Best Practice It as Coronavirus Spreads*, Time, Josiah Bates, March 11 (<https://time.com/5800442/social-distancing-coronavirus/>).

March 12, 2020: Governor Ralph S. Northam issued Executive Order 51 declaring a state of emergency for the Commonwealth of Virginia arising from the COVID-19 pandemic. In Executive Order 51, the Governor expressly acknowledged that the anticipated effects of COVID-19 constitute a “disaster” as defined in Virginia Code § 44-146.21.

State and local governmental and health officials issued guidance advising or directing that in-person gatherings of 10 or more persons should be avoided or prohibited, and advising individuals to maintain “social distancing” of at least 6 feet.

March 13, 2020: President Donald J. Trump issued Proclamation 9994 Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak (“Proclamation 9994”). Proclamation 9994 stated that on March 11, 2020 the World Health Organization announced that the COVID-19 outbreak could be characterized as a pandemic. Further, Proclamation 9994 acknowledges the need for additional measures to contain the spread of the virus and declared a national emergency, beginning March 1, 2020.

March 15, 2020: The CDC issued guidance that gatherings should not exceed more than 50 people for the next eight weeks. NYT *A Timeline of the Coronavirus Pandemic*.

March 16, 2020: The White House and the White House Coronavirus Task Force issued new guidelines to mitigate the spread of the virus in the United States. The guidelines included recommendations that individuals who are sick, elderly, or have a serious underlying health condition stay home. Additionally, the guidelines encouraged teleworking when possible and avoiding gatherings of more than 10 individuals.

March 16, 2020: The Loudoun County Administrator, acting as the Director of Emergency Management, declared a local emergency due to the COVID-19 pandemic.

March 17, 2020: The Board adopted a Resolution Confirming Declaration of Local Emergency, as of 10:00 a.m. March 16, 2020, specifically finding that the COVID-19 pandemic constitutes a “disaster” as defined in Va. Code § 44-146.16, being a “communicable disease of public health threat.” Va. Code § 15.2-1413 provides that notwithstanding any contrary provision of law, a locality may, by ordinance, provide a method to assure continuity of government in the event of a disaster for a period not to exceed six months.

The Board adopted a Resolution Extending the Time to Pay Personal Property Taxes pursuant to Va. Code § 58.1-3916, extending the deadline to pay the first installment of personal property taxes from May 5, 2020 to June 5, 2020.

Loudoun County released a news alert that the County would be implementing social distancing measures in its departments. As such, certain county service centers would be temporarily closed to the public to allow the departments time to train on and implement social distancing measures per the CDC's recommendation. *See* <https://www.loudoun.gov/CivicAlerts.aspx?AID=5591>.

Governor Northam issued an Order of the Governor and State Health Commissioner Declaration of Public Health Emergency banning on gatherings of more than 10 individuals in restaurants, fitness centers, and recreational facilities.

March 18, 2020: The Families First Coronavirus Response Act ("FFCRA") was signed into law. The FFCRA addresses the outbreak of the COVID-19 in the United States, included paid sick leave, insurance coverage of coronavirus testing, nutrition assistance, and unemployment benefits.

March 19, 2020: Loudoun County released a news alert noting evidence of community spread of the coronavirus in Northern Virginia and encouraging vigilant social distancing and following other recommended preventative measures. *See* <https://www.loudoun.gov/CivicAlerts.aspx?AID=5611>.

March 20, 2020: Attorney General Mark R. Herring issued an opinion confirming that localities have authority to adopt ordinances to assure continuity in government during the current disaster, and that such ordinances may authorize departures from otherwise-governing state law. Additionally, Governor Northam activated the Virginia National Guard. *Id.*

Governor Northam issued an Amended Order of the Governor and State Health Commissioner Declaration of Public Health Emergency, amending the March 17, 2020 Order, banning on gatherings of more than 10 individuals in restaurants, fitness centers, and theaters, as those facilities are defined in Va. Code § 35.1-1 and Va. Code § 15.2-2820, and providing that failure to comply is punishable by a Class 1 misdemeanor pursuant to Va. Code § 32.1-27.

March 21, 2020: The Board approved electronic public meetings.

March 23, 2020: Governor Northam issued Executive Order 53, which expressly prohibits "public or private in person gathers of 10 or more individuals." The Executive Order also closes all schools in Virginia for the remainder of the 2019-2020 school year. Further, the Executive Order directs the closure of all public access to recreational and entertainment businesses and to restaurants.

Loudoun County issued a news alert detailing the local impact of Executive Order 53. The news alert indicated that the Loudoun County Sheriff's Office would be assessing gatherings of more than 10 individuals and encouraging the groups to disperse. *See* <https://www.loudoun.gov/CivicAlerts.aspx?AID=5623>.

March 26, 2020: The United States officially became the country with the most confirmed cases of COVID-19 in the world. NYT *A Timeline of the Coronavirus Pandemic*.

March 27, 2020: The Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) was signed into law. The CARES Act allocates funds to individuals, big corporations, small businesses, public health, and state and local governments.

March 28, 2020: Governor Northam issued Executive Order 54, directing the Commissioner of the Virginia Employment Commission to execute agreements with the U.S. Department of Labor relating to the implementation of the CARES Act.

March 30, 2020: President Trump extended the federal social distancing guidelines until April 30, 2020.

Governor Northam issued Executive Order 55 which directs all Virginia residents to stay at their places of residence unless they are seeking essential services, including grocery shopping or medical care, visiting family or caring for other individuals or animals, engaging in outdoor exercise, or traveling for work. The Executive Order remains in effect until June 10, 2020 unless amended.

EXHIBIT B

LOUDOUN COUNTY'S RESPONSE TO COVID-19

BACKGROUND AND DEMOGRAPHICS

Loudoun County, Virginia ("the County") is the third most populous County in the Commonwealth of Virginia. It is a 520 square mile mixture of rural, suburban, and urban areas. Located 25 miles northwest of Washington D.C., the County is bordered to the west by the Blue Ridge Mountains and to the north by the Potomac River. There are eight election districts and seven incorporated towns, including historic Leesburg which has served continuously as the County seat since 1757. Eastern Loudoun County is primarily urban and suburban, dominated by Dulles International Airport, professional and technical service businesses, and residential communities. See *2019 Loudoun County Emergency Operations Plan*, 10-11 (<https://www.loudoun.gov/DocumentCenter/View/115801>).

The County is governed by a nine-member Board of Supervisors. The Chairman of the Board of Supervisors is an at-large seat and elected by a County-wide vote. Supervisors are elected from each of the eight election districts in the County. *Id.*

The County's Government consists of 35 Departments and Offices:

- | | |
|------------------------------------|---|
| 1. Animal Services | 20. Health Department |
| 2. Area Agency on Aging | 21. Health & Human Services |
| 3. Board of Supervisors | 22. Human Resources |
| 4. Building & Development | 23. Information Technology |
| 5. Clerk of the Circuit Court | 24. Library Services |
| 6. Commissioner of the Revenue | 25. Mapping & Geographic Information |
| 7. Commonwealth's Attorney | 26. Mental Health, Substance Abuse &
Develop. Services |
| 8. Community Corrections | 27. Parks, Recreation & Community Services |
| 9. County Administrator | 28. Planning & Zoning |
| 10. County Attorney | 29. Procurement |
| 11. Courts & Judicial Services | 30. Public Affairs & Communications |
| 12. Economic Development | 31. Sheriff's Office |
| 13. Elections & Voter Registration | 32. Transit & Commuter Services |
| 14. Emergency Management | 33. Transportation & Capital Infrastructure |
| 15. Environmental Health | 34. Treasurer's Office |
| 16. Family Services | 35. Virginia Cooperative Extension -
Loudoun |
| 17. Finance & Budget | |
| 18. Fire & Rescue | |
| 19. General Services | |

LOUDOUN COUNTY PANDEMIC RESPONSE PLAN

The Loudoun County Pandemic Response Plan ("PRP") encompasses a detailed summary of the County's public health response and references the County's plans for the continuation of critical government services during a pandemic. It describes a coordinated local strategy to prepare for

and respond to a pandemic and serves as Incident Annex to Loudoun County's Emergency Operations Plan ("EOP") and as an appendix to the LHD All-Hazards EOP. The PRP is intended to be a synthesized guide for responding agencies, an overview to provide information to the public on the County's preparedness, and a tool to assist the public in their own planning and preparedness. On March 1, 2020, the PRP was updated to include a response to all pandemics, not only influenza. *Loudoun County Pandemic Response Plan*, 3 (<https://www.loudoun.gov/DocumentCenter/View/179>). The County's priorities during a pandemic are to ensure the continuation and delivery of essential County and public health services while providing for the emergency needs of the population and assuring access to vaccinations for all County residents. *Id.* at 16.

EMERGENCY OPERATIONS PLAN

The County's Emergency Operations Plan ("EOP") was most recently updated on August 14, 2019 and authorized by Tim Hemstreet, the County's Emergency Management Director (also County Administrator). *2019 Loudoun County Emergency Operations Plan* at 7. The EOP describes the roles, responsibilities, and actions necessary to provide an effective, efficient, and coordinated response to a significant event in Loudoun County, Virginia. The EOP provides a framework of direction to identified agencies in order to successfully prepare for, respond to, and begin the recovery process from a significant event that impacts the County.

In the event of a local emergency, the County must ensure that it meets its statutory obligations defined in Title 44 of the Code of Virginia. It must also assign responsibilities and identify actions for organizations and individuals; establish lines of authority and organizational relationships to ensure missions and assignments are coordinated; provide direction, control, and coordination of County resources; utilize procedures and support requirements necessary for the activation and operation of the Emergency Operations Center ("EOC"); promote and outline operational plans, policies, and procedures necessary for identified agencies to develop and implement in order to effectively respond to the emergency; and manage and control, operations, planning, logistics, and finance and administration sections employed during an EOC activation. *Id.* at 11.

In the early stages of COVID-19, the County's Office of Emergency Management ("OEM") utilized the EOP to begin evaluating the hazard of COVID-19 and its potential effect on the community, develop a detailed analysis of available community resources, as well as evaluate its resource capabilities across five mission areas: Prevention, Protection, Mitigation, Response, and Recovery. *Id.* at 14. These mission areas have continued to be addressed throughout this unprecedented crisis.

In addition to the County's Emergency Management Director, Tim Hemstreet, the Coordinator of Emergency Management is responsible for the day-to-day administration of the OEM. A primary mission of OEM is gathering, compiling, analyzing, and reporting situational awareness. *Id.* at 15.

EMERGENCY OPERATIONS CENTER

The Emergency Operations Center ("EOC") provides a central location to determine situational status, coordinate actions, and make critical decisions during emergency and disaster situations.

Emergency Management staff maintain the EOC during routine operations. Personnel from various departments and agencies in the County along with key organizations outside the County comprise the EOC staff during activation.

On March 6, 2020, the EOC was opened with activation at enhanced monitoring level, focused on planning and coordination in preparation for the first COVID-19 case in Loudoun County. This also involved the Emergency Management Executive Committee (“EMEC” or “Policy Group”) consisting of:

- Office of the County Administrator (Mr. Hemstreet and all Assistant County Administrators)
- Department of Animal Services
- Department of Family Services
- Department of Finance and Procurement
- Department of Fire and Rescue
- Department of General Services
- Department of Information Technology
- Department of Parks, Recreation, and Community Services
- Loudoun County Health Department
- Loudoun County Public Schools
- Office of Emergency Management
- Public Affairs and Communications
- Loudoun County Sheriff’s Office

This group provided and continues to provide discipline-specific subject matter expertise to assist the Director during the strategic goal development process and formulated policy guidance and recommendations for the Director regarding emergency policy decisions. Between March 6, 2020 and March 16, 2020, Mr. Hemstreet and members of the EMEC had regular and frequent engagement with and at the EOC.

On March 16, 2020, Mr. Hemstreet, acting as the Director of Emergency Management, declared a local emergency due to the COVID-19 pandemic. The next day, the Loudoun County Board of Supervisors adopted a Resolution Confirming Declaration of Local Emergency.

Beginning March 16, 2020, the EOC transitioned to partial activation status, which brought in additional staffing and functions. On that date, Mr. Hemstreet dedicated himself completely to the EOC and the COVID-19 emergency. Also on that date, all Assistant County Administrators were completely dedicated to this event, two of which serve as Government Liaison Officers in the EOC. Mr. Charles Yudd, Deputy County Administrator, is now running the day to day operations of the government and has been indirectly dedicated to the EOC regarding modifications of County services.

The EOC holds two briefings a day with the EMEC/Policy Group, one in the morning and one in the evening. These briefings are run by Mr. Hemstreet and generally last from 45-60 minutes each. The morning briefing is used to discuss priority initiatives to be taken that day and the evening briefing is used as a status update of what was accomplished that day. During the remaining parts

of the day, the EOC and the EMEC/Policy Group work on COVID-19-related response activities, including continually reviewing updated guidance of the CDC and WHO, federal and state orders, statutes, and directives. The CDC alone updates guidance almost daily, which in turn requires interpretation and application by County leadership. A daily summary report is provided to the Board of Supervisors.

Every presidential and gubernatorial press conference is reviewed, analyzed, and evaluated in this crisis. Federal and state orders, statutes, and directives are often vague, so EOC, the EMEC/Policy Group, and other County Staff must evaluate the actual documents and find guidance and clarification. The County also spends a significant amount of time collecting, analyzing and funneling requests from citizens.

A typical local declaration of emergency in the County is issued to address a snow or wind event. These are, for the most part, handled at the Department level, with leadership and guidance from EOC and the EMEC/Policy Group. But the COVID-19 emergency is anything but typical. It has been an entirely unique emergency event which has required the County to make important policy decisions and strategic plans in an ever-changing environment. There is no luxury of time, and the facts and knowledge of the COVID-19 virus change daily, if not hourly. In addition, with every Presidential order, act of Congress, Executive Order by the Governor, change in advice from the CDC and/or the WHO, the County must re-evaluate its policies and strategic planning. Mr. Hemstreet typically uses a task force approach by assigning a lead to a specific order, statute, directive, etc.

While Department Directors are necessarily working with the EOC, they not only rely on their staff to assist with emergency planning and response, staff must also assist with the day-to-day operations of their departments. All of this must be done when there is a reduced pool of staff due self-isolation, caregiving to someone with COVID-19, caring for children at home due to school closure, social distancing, protection of high risk staff, teleworking, etc.

In contrast to other local emergencies, the County, State, and Federal Government are working in unknown territory. The uniqueness and complexity of this emergency requires a top down approach; the direction needs to come from top down. This means that almost all of the County's top leadership is working exclusively on the COVID-19 emergency. This is unprecedented in Loudoun County.

COVID-19 has affected virtually every single aspect of County government. Sadly, based on the length of the Governor's stay at home order, the County anticipates operating in the current manner for months to come, certainly past the date of the currently scheduled evidentiary hearing in this Case No. PUR-2019-00218. The impact of COVID-19 cannot be overstated. It is entirely probable that the General Assembly will be unable to convene due to the limitations of social distancing and the large number of people that would need to gather. That may leave Virginia localities, including the Loudoun County Board of Supervisors, as the only legislative body with the ability to manage this crisis.

Loudoun County is the third most populous county in the state. It consists of 35 departments and offices. The County includes seven incorporated towns and a critical international airport. Its

close proximity to Washington, D.C. and location in Northern Virginia, the area of the state with the highest percentage of COVID-19 cases, adds an additional layer of complexity to this crisis.

At all times during this crisis, the County has utilized a great deal of its resources, including most County staff with authority to make decisions for the County, to focus on the ever-changing issues, while taking action to contain and control disease outbreaks, limit the number of illnesses and deaths, preserve continuity of critical government functions, minimize social disruption, and minimize economic losses. The COVID-19 pandemic has placed significant stresses on our organization and staff, and actions to address the unfortunate reality of the current situation may place additional strain on departments and County staff. The County expects the evolving COVID-19 pandemic will require similar dedication of its resources for months to come.